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HOUSE BILL 266

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Edward C. Sandoval

AN ACT

**RELATING TO ELECTIONS; PROVIDING FOR EARLY PROCESSING OF
ABSENTEE BALLOTS; SPECIFYING THAT THE ABSENTEE BALLOT REGISTER
IS A PUBLIC RECORD SUBJECT TO THE INSPECTION OF PUBLIC RECORDS
ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 1-6-4 NMSA 1978 (being Laws 1969,
Chapter 240, Section 130, as amended by Laws 2003, Chapter 356,
Section 18 and by Laws 2003, Chapter 357, Section 1) is amended
to read:**

**"1-6-4. ABSENTEE BALLOT APPLICATION-- FEDERAL QUALIFIED
ELECTOR-- OVERSEAS VOTER. --**

**A. Application by a federal qualified elector or an
overseas voter for an absentee ballot shall be made on the
official postcard form prescribed or authorized by the federal**

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1 government to the county clerk of the county of his residence.
2 The form shall allow the applicant to receive an absentee
3 ballot for all elections within an election cycle.

4 B. Application by a voter for an absentee ballot
5 shall be made only on a form prescribed, printed and furnished
6 by the secretary of state to the county clerk of the county in
7 which the voter resides. The form shall identify the applicant
8 and contain information to establish ~~[his]~~ the voter's
9 qualification for issuance of an absentee ballot under the
10 Absent Voter Act; provided that on the application form for a
11 general election ballot there shall be no box, space or place
12 provided for designation of the voter's political party
13 affiliation. ~~[The form shall allow the applicant to receive an~~
14 ~~absentee ballot for all elections within an election cycle.]~~

15 C. Each application for an absentee ballot shall be
16 subscribed by the applicant. The application shall be
17 delivered to the county clerk by the applicant in person or by
18 mail.

19 D. An application for an absentee ballot by a
20 federal qualified elector or an overseas voter shall be
21 accepted at any time preceding the general election."

22 Section 2. Section 1-6-5.4 NMSA 1978 (being Laws 1999,
23 Chapter 267, Section 3) is amended to read:

24 "1-6-5.4. SECURITY--COUNTING AND CANVASSING. --

25 A. The secretary of state shall adopt rules for

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1 protecting the integrity, security and secrecy of the absentee
2 ballots, including procedures specifying that machines and
3 ballot containers remain locked and that ballots not be removed
4 prior to election day; procedures for voting by absentee
5 ballot; separation of absentee ballots voted on electronic
6 voting machines twenty days before the election from those
7 received through the mail; disposition of absentee ballots
8 rejected by a voting machine; and handling of, registering,
9 counting and canvassing of absentee ballots [~~and sorting of~~
10 ~~absentee ballots by representative district for canvassing~~
11 ~~purposes~~].

12 B. "Registering of absentee ballots" means
13 inserting the paper absentee ballot into an electronic voting
14 system for recording and retention until votes may be counted
15 and canvassed."

16 Section 3. Section 1-6-6 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 132, as amended by Laws 2003, Chapter 356,
18 Section 21 and by Laws 2003, Chapter 357, Section 3) is amended
19 to read:

20 "1-6-6. ABSENTEE BALLOT REGISTER. --

21 A. For each election, the county clerk shall keep
22 an "absentee ballot register", in which [he] the county clerk
23 shall enter:

24 (1) the name and address of each absentee
25 ballot applicant;

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- 1 (2) the date and time of receipt of the
- 2 application;
- 3 (3) whether the application was accepted or
- 4 rejected;
- 5 (4) the date of issue of an absentee ballot in
- 6 the county clerk's office or at an alternate location or the
- 7 mailing of an absentee ballot to the applicant;
- 8 (5) the applicant's precinct;
- 9 (6) whether the applicant is a voter, a
- 10 federal voter, a federal qualified elector or an overseas
- 11 voter;
- 12 (7) whether the voter is required to submit
- 13 identification pursuant to Section 1-6-5 NMSA 1978; and
- 14 (8) the date and time the completed absentee
- 15 ballot was received from the applicant by the county clerk or
- 16 the date and time the absent voter voted early in person in the
- 17 county clerk's office or at an alternate location.

18 B. Within twenty-four hours after receipt of a

19 voter's application for an absentee ballot, the county clerk

20 shall mail either the ballot, if it is within twenty-eight days

21 of election day, or a notice of rejection to the applicant.

22 C. The absentee ballot register [~~is~~] shall be

23 considered a public record open to public inspection in the

24 county clerk's office [~~during regular office hours. The county~~

25 ~~clerk shall have an updated absentee ballot register available~~

1 ~~for public inspection Monday through Friday during regular~~
2 ~~office hours]~~ pursuant to the Inspection of Public Records Act.

3 D. The county clerk shall deliver to the absent
4 voter precinct on election day a complete list of all absentee
5 ballot applicants and early voters with applicable information
6 shown in the absentee ballot register for each applicant and
7 early voter up to 6:00 p.m. on the Saturday preceding the
8 election. The county clerk shall deliver a signature roster
9 containing the same information as the lists to the absent
10 voter precinct board.

11 E. The county clerk shall transmit to the secretary
12 of state and to the county chairman of each of the major
13 political parties in the county a complete copy of entries made
14 in the absentee ballot register. Such transmissions shall be
15 made once each week beginning four weeks immediately prior to
16 the election. A final copy shall be transmitted on the
17 Saturday immediately following the election.

18 F. If the county clerk has available the technology
19 to do so, at the request of a candidate or chair of a political
20 party of the county, the county clerk shall on election day
21 electronically transmit to the candidate or chair via the
22 internet the information [~~when updated~~] on the absentee ballot
23 register indicating voters who have requested absentee ballots,
24 returned their absentee ballots or voted early in person. "

25 Section 4. Section 1-6-10 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 136, as amended) is amended to read:

2 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK. --

3 A. The county clerk shall mark on each completed
4 official mailing envelope the date and time of receipt in the
5 clerk's office, record this information in the absentee ballot
6 register and safely keep the official mailing envelope unopened
7 in a locked and number-sealed ballot box [~~except as provided in~~
8 ~~Subsection H of Section 1-6-14 NMSA 1978~~] until it is delivered
9 [~~on election day~~] to the proper absent voter precinct board or
10 until it is canceled and destroyed in accordance with law.

11 B. The county clerk shall accept completed official
12 mailing envelopes until 7:00 p.m. on election day. Any
13 completed official mailing envelope received after that time
14 shall not be delivered to a precinct board but shall be
15 preserved by the county clerk until the time for election
16 contests has expired. In the absence of a restraining order
17 after expiration of the time for election contests, the county
18 clerk shall destroy all late official mailing envelopes without
19 opening or permitting the contents to be examined, cast,
20 counted or canvassed. Before their destruction, the county
21 clerk shall count the numbers of late ballots from voters,
22 federal voters, overseas citizen voters and federal qualified
23 electors and report the number from each category to the
24 secretary of state.

25 C. At 5:00 p.m. on the Monday immediately preceding

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1 the date of election, the county clerk shall record the numbers
2 of the unused absentee ballots and shall publicly destroy in
3 the county clerk's office all such unused ballots. The county
4 clerk shall execute a certificate of destruction, which shall
5 include the numbers on the absentee ballots destroyed. A copy
6 of the certificate of destruction shall be sent to the
7 secretary of state. "

8 Section 5. Section 1-6-11 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 137, as amended) is amended to read:

10 "1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
11 PRECINCTS. --

12 A. On the Thursday immediately preceding election
13 day, the county clerk shall deliver to the special deputy
14 county clerks for delivery to the absent voter precinct board
15 the absentee ballots received prior to that day. The special
16 deputy county clerk shall issue a receipt for all ballots
17 delivered for the county clerk and shall observe the listing of
18 the names on the official mailing envelopes in the signature
19 rosters. The special deputy county clerk shall then obtain a
20 receipt executed by the presiding judge and each election judge
21 and shall return the receipt to the county clerk for filing.
22 The receipts shall specify the number of envelopes received by
23 the special deputy county clerk from the county clerk for the
24 absent voter precinct and the number of envelopes received by
25 the absent voter precinct board from the special deputy county

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1 clerk.

2 ~~[A.]~~ B. On election day, the county clerk shall
3 deliver the absentee ballots received after the Wednesday
4 immediately preceding election day but prior to 7:00 p. m. on
5 election day to the special deputy county clerks for delivery
6 to the absent voter precinct boards. ~~[The absentee ballots for~~
7 ~~each absent voter precinct shall be separately wrapped, and]~~
8 The special deputy county clerk shall issue a receipt for all
9 ballots delivered for the county clerk ~~[Upon delivery of the~~
10 ~~absentee ballots to the absent voter precinct board, the~~
11 ~~special deputy county clerk shall remain in the polling place~~
12 ~~of the absent voter precinct until he has observed the opening~~
13 ~~of the official mailing envelope, the deposit of the ballot in~~
14 ~~the locked ballot box]~~ and shall observe the listing of the
15 names on the official mailing envelope in the signature
16 rosters. ~~[Upon such delivery of absentee ballots]~~ The special
17 deputy county clerk shall then obtain a receipt executed by the
18 presiding judge and each election judge and ~~[he]~~ shall return
19 ~~[such]~~ the receipt to the county clerk for filing. The
20 receipts shall specify the number of envelopes received by the
21 special deputy county clerk from the county clerk for each
22 absent voter precinct and the number of envelopes received by
23 the absent voter precinct board from the special deputy county
24 clerk.

25 ~~[B.]~~ C. At 7:00 a. m. on election day, the county

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1 clerk shall deliver the electronic voting machines used for
2 absentee voting to the absent voter precinct board. The
3 machines shall not be used to vote on or count additional
4 ballots for that election. A special deputy county clerk shall
5 issue a receipt for each voting machine. Upon delivery of a
6 voting machine, the special deputy shall:

7 (1) obtain a receipt executed by the presiding
8 judge and each election judge specifying the serial number and
9 the seal number of the machine [~~and shall~~];

10 (2) verify the public counter number on the
11 machine [~~and he shall~~]; and

12 (3) return the receipt to the county clerk for
13 filing. "

14 Section 6. Section 1-6-14 NMSA 1978 (being Laws 1971,
15 Chapter 317, Section 11, as amended by Laws 2003, Chapter 354,
16 Section 1 and by Laws 2003, Chapter 356, Section 22) is amended
17 to read:

18 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
19 PRECINCT BOARDS. - -

20 A. Before opening an official mailing envelope, the
21 presiding judge and the election judges shall determine that
22 the required information has been completed on the reverse side
23 of the official mailing envelope.

24 B. If the voter's signature is missing, the
25 presiding judge shall write "Rejected" on the front of the

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1 official mailing envelope. The election clerks shall enter the
2 voter's name in the signature rosters and shall write the
3 notation "Rejected--Missing Signature" in the "Notations"
4 column of the signature rosters. The presiding judge shall
5 place the official mailing envelope unopened in an envelope
6 provided for rejected ballots, seal the envelope and write the
7 voter's name on the front of the envelope and deposit it in the
8 locked ballot box.

9 C. A lawfully appointed challenger may examine the
10 official mailing envelope and may challenge the ballot of any
11 absent voter for the following reasons:

12 (1) the official mailing envelope has been
13 opened prior to being received by the absent voter precinct
14 board; or

15 (2) the person offering to vote is not a
16 federal voter, federal qualified elector, overseas voter or
17 voter as provided in the Election Code.

18 Upon the challenge of an absentee ballot, the election
19 judges and the presiding election judge shall follow the same
20 procedure as when ballots are challenged when a person attempts
21 to vote in person. If a challenge is upheld, the official
22 mailing envelope shall not be opened but shall be placed in an
23 envelope provided for challenged ballots. The same procedure
24 shall be followed in canvassing and determining the validity of
25 challenged absentee ballots as with other challenged ballots.

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1 D. If the official mailing envelope has been
2 properly subscribed and the voter has not been challenged:

3 ~~[(1) the election judges shall open the~~
4 ~~official mailing envelope and deposit the ballot in its still-~~
5 ~~sealed official inner envelope in the locked ballot box; and~~

6 ~~(2)]~~ (1) the election clerks shall enter the
7 absent voter's name and residence address as shown on the
8 official mailing envelope in the signature rosters and shall
9 mark the notation "AB" opposite the voter's name in the
10 "Notations" column of the signature rosters; and

11 (2) under the personal supervision of the
12 presiding election judge, the election judges shall open the
13 official mailing envelope and the official inner envelope and
14 insert the enclosed ballot into an electronic voting system to
15 be registered and retained until votes are counted and
16 canvassed following the closing of the polls on election night.

17 E. ~~[Prior to the closing of the polls, the election~~
18 ~~judges and the presiding election judge may either remove the~~
19 ~~absentee ballots from the official inner envelopes and count~~
20 ~~and tally the results of absentee balloting or, under the~~
21 ~~personal supervision of the presiding election judge and one~~
22 ~~election judge from each major political party, count and tally~~
23 ~~the absentee ballots on an electronic voting machine the same~~
24 ~~as if the absent voters had been present and voted in person.]~~

25 It is unlawful for a person to disclose the results of a count

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1 and tally or the registration on a voting machine of absentee
2 ballots prior to the closing of the polls.

3 F. Absentee ballots shall be counted and tallied on
4 an electronic voting machine as provided in the Election Code.

5 G. Absent voter precinct polls shall close at the
6 time prescribed by the Election Code for other polling places,
7 and the results of the election shall be certified as
8 prescribed by the secretary of state.

9 ~~[H. The county clerk may convene the absent voter~~
10 ~~precinct board no more than three days before the day of the~~
11 ~~election to alphabetize, enter on the roster and sort the~~
12 ~~absentee ballots by legislative district; provided that a~~
13 ~~member of the absent voter precinct board shall not open an~~
14 ~~official mailing envelope or count and canvass any absentee~~
15 ~~ballot prior to the day of the election.~~

16 ~~F.]~~ H. If an absentee ballot does not contain the
17 identification required pursuant to Subsection D of Section
18 1-6-5 NMSA 1978, it shall be handled as a provisional paper
19 ballot in accordance with the Election Code. "

20 Section 7. Section 1-6-20 NMSA 1978 (being Laws 1969,
21 Chapter 54, Section 3, as amended) is amended to read:

22 "1-6-20. CREATION OF ABSENT VOTER PRECINCT. --

23 A. The board of county commissioners shall adopt a
24 resolution creating, for absent voting purposes only, an absent
25 voter precinct for each ~~[state representative district in the~~

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1 ~~county. The boundaries of such precinct shall coincide with~~
2 ~~the boundaries of the state representative district except for~~
3 ~~multicounty representative districts. In multicounty~~
4 ~~representative districts, the boundaries of the absent voter~~
5 ~~precinct in each county shall coincide with the boundaries of~~
6 ~~that portion of the representative district lying within the]~~
7 ~~county.~~

8 B. Absent voter precincts shall be identified by
9 the name of the county [and the state representative district
10 number. In the case of multicounty representative districts,
11 the absent voter precinct in each county shall be distinguished
12 by the name of the county]. "

13 Section 8. Section 1-6-22 NMSA 1978 (being Laws 1969,
14 Chapter 54, Section 4, as amended) is amended to read:

15 "1-6-22. DESIGNATION OF ABSENT VOTER PRECINCT POLLING
16 PLACE.--The board of county commissioners of each county shall
17 designate a polling place in each absent voter precinct at the
18 time [such] the precinct is created [or consolidated]."

19 Section 9. Section 1-6-23 NMSA 1978 (being Laws 1975,
20 Chapter 255, Section 95, as amended) is amended to read:

21 "1-6-23. ABSENT VOTER PRECINCT POLLING PLACE-- HOURS ON
22 ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or
23 statutorily appointed supervisor of the election shall
24 determine the hours during which the absent voter precinct
25 polling place shall be open for delivery and registration of

1 absentee ballots on the three days preceding election day and
2 the delivery, registration and counting of ballots on election
3 day and subsequent days until all ballots are counted. "

4 Section 10. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2005.

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